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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE PETITION OF PANDORA MEDIA, INC. 12 Civ. 8035 (DLC) (MHD)

4 -----x
5 Related to

6 UNITED STATES OF AMERICA,

7 Plaintiff,

New York, N.Y.

8 v.

41 Civ. 1395 (DLC) (MHD)

9 AMERICAN SOCIETY OF COMPOSERS,
10 AUTHORS AND PUBLISHERS,

11 Defendant.

12 -----x
13 May 22, 2013
14 9:41 a.m.

15 Before:

16 HON. DENISE L. COTE,

17 District Judge

18 APPEARANCES

19 GREENBERG TRAURIG, LLP

Attorneys for Petitioner Pandora Media, Inc.

20 BY: KENNETH L. STEINTHAL

- and -

21 CHRISTOPHER HARRISON

Pandora Assistant General Counsel

- and -

22 KING & SPALDING LLP

23 BY: JOSEPH R. WETZEL
24
25

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APPEARANCES CONTINUED

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (NY)

Attorneys for Respondent ASCAP

BY: JAY COHEN

DARREN W. JOHNSON

- and -

RICHARD H. REIMER

In-House Counsel ASCAP

PRYOR CASHMAN LLP

Attorneys for non-parties

Sony/ATV Music Publishing and

EMI Music Publishing

BY: DONALD S. ZAKARIN

FRANK P. SCIBILIA

ERICH CAREY

oOo

THE CLERK: In the matter of In Re Petition of Pandora
Media, Inc.

Counsel for the petitioner, please state your name for
the record.

MR. STEINTHAL: Kenneth Steintal, from King &
Spalding, and I have Joseph Wetzel from King & Spalding and
Chris Harrison from Pandora with me.

THE COURT: Thank you.

THE CLERK: And for ASCAP, please state your name for
the record.

MR. COHEN: Yes. Jay Cohen, from Paul Weiss, for
ASCAP, with Mr. Johnson, and Mr. Reimer from ASCAP.

THE CLERK: And for the nonparties, could you please
state your name for the record and the party you represent.

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1 MR. ZAKARIN: Don Zakarin, your Honor, for EMI and
2 Sony/ATV Music Publishing, LLC. With me is Frank Scibilia and
3 Erich Carey.

4 THE COURT: Thank you.

5 Welcome all. I have two letters of May 17th, one from
6 Mr. Steinthal and one from Mr. Zakarin.

7 So, Mr. Steinthal, Mr. Zakarin says we don't need this
8 conference. And if we don't, I'm very sorry that all counsel
9 are here. So why don't we address that issue first.

10 It sounds, from Mr. Zakarin's letter, like you are
11 getting everything you agreed to reduce your request to.

12 MR. STEINTHAL: That is not accurate, your Honor.

13 THE COURT: So what are you not receiving that you
14 would still like to receive?

15 MR. STEINTHAL: Our letter actually ticks off nine
16 specific subject matters. On page 2, after setting forth that
17 we have gone through a meet-and-confer process, which
18 successfully narrowed many of the objections -- we withdrew
19 some, we agreed on some narrowing -- but there were some
20 fundamental areas that we had requested documents we had
21 requested that they simply refused to produce. That was their
22 position.

23 You know, they have their position. It is either
24 irrelevant, burdensome, or whatever it is. But we never agreed
25 as part of the process to forego our ability to move to compel

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1 responses there. The meet-and-confer process worked in the
2 sense that we narrowed a ton of objections down to a much
3 narrower set of materials where we had a dispute.

4 But the nine categories of materials on the first full
5 paragraph of page 2, I was stunned when I read Mr. Zakarin's
6 letter that we had no disputes, because he didn't address those
7 nine particular subject matters that they continue to press
8 objections on.

9 THE COURT: OK. So let me interrupt you and ask
10 Mr. Zakarin.

11 So, Mr. Zakarin, if you could help me here? Do you
12 think a further meet and confer on these nine issues would
13 resolve the dispute? And I am happy to let you use my jury
14 room if you think it would.

15 MR. ZAKARIN: Your Honor, first of all, our
16 understanding of the meet-and-confer process is somewhat
17 different than Mr. Steinthal's, obviously. Our understanding
18 of the process was that we made compromises with the
19 anticipation and expectation that they were doing the same. We
20 didn't embark upon it, engage in it, and make the compromises
21 we made with the understanding that whatever they didn't get at
22 the end of that process was fair game.

23 But so be it; I can deal with that as well. Because
24 if you look at Mr. Steinthal's nine categories, as you look at
25 them, virtually all of them -- by the way, they way they are

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1 presented is not quite the way they are presented as you might
2 expect in their requests. Their requests, while there were 47
3 of them starting out, there were six or seven subparts to most
4 of the requests. So we're talking about a subpoena on a
5 nonparty asking for 200-some-odd different categories of
6 documents.

7 THE COURT: I am afraid the two-page limit rule puts a
8 burden on counsel. So I understand your point.

9 MR. ZAKARIN: Well, Mr. Steinthal has sort of dodged
10 the two-page limit with his attachments, I think, but --

11 THE COURT: Everyone does.

12 MR. ZAKARIN: Maybe that is the next rule.

13 THE COURT: No. I don't think so.

14 But, anyway, I appreciate the suggestion.

15 MR. ZAKARIN: In any event, in turning to it, though,
16 most of the categories, plainly stated, if you look at them are
17 actually appropriate requests, if they are appropriate, of
18 ASCAP, not of us. By way of example: "Produce documents,
19 ASCAP's negotiations with the licensing of Pandora."

20 Well, Pandora has all of that material itself. ASCAP
21 has that. We're not parties to their negotiations. So why --
22 and there are a host of requests made of us that are really
23 appropriately made to ASCAP. And, indeed, it appears and we
24 understood that they were deferring -- not giving up but
25 deferring any requests of us with respect to requests that are

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1 more appropriately addressed to ASCAP. So that's what's
2 sitting there.

3 Other publishers' negotiations with the licensing of
4 Pandora, as we said to them, we're producing everything
5 relating to our license to you, our withdrawal from ASCAP, our
6 withdrawal of rights, we're giving you ours; both BMI and Sony
7 are doing that. If you are negotiating with other publishers
8 or you believe there is information with other publishers,
9 subpoena them, and indeed they have. So this is still sitting
10 there despite the fact that they've issued subpoenas on
11 Warner/Chappell. They have issued subpoenas on Universal Music
12 Publishing Group.

13 You turn to 3, ASCAP settlements with Greater Music
14 License Committee. We are not a party to that settlement;
15 ASCAP is a party to that settlement. And we've agreed,
16 actually, to produce whatever documents we have that pertain to
17 that we may have produced in connection with that litigation
18 and settlement, but that's an ASCAP matter. So we are not even
19 a party to the settlement, as we told them.

20 The ASCAP compendium changes, again, ASCAP has the
21 compendium. It is online. It is publicly available, and they
22 can get that from ASCAP, as we've told them.

23 Sony's withdrawal or EMI's withdrawal of works. Well,
24 we are producing all the documents that show our withdrawal,
25 our withdrawal agreement, and the compendium deals with

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1 everything else. It is there. We've already agreed to produce
2 that.

3 The administration of direct licenses. They can get
4 the administration agreement, assuming that it is germane, from
5 ASCAP. Sony and EMI, having withdrawn their rights, and after
6 entering into a license with Pandora, subsequently negotiated
7 an administration agreement with ASCAP to administer on Sony
8 and EMI's behalf the collection of monies and the payment of
9 monies -- not the licensing. Now, to the extent that that
10 bears on the rate proceeding in the sense that maybe we have to
11 pay ASCAP some money for administration and that should be
12 deducted in some computation of the Sony or EMI license as a
13 metric, they have that information. That is readily available
14 from ASCAP. I don't know what it has to do with the rate
15 proceeding, but if it is a cost factor, they could have it and
16 they can get it. They don't need it from us but it is just an
17 agreement.

18 Adjustable blanket licenses. We've already advised
19 them in the lengthy meet and confer Sony and EMI don't grant
20 adjustable rate blanket licenses. Where we've done blanket
21 licenses -- and most publishers have done blanket licenses of
22 their catalogs and direct licensing with various parties --
23 they usually charge a very substantial advance. They license
24 their entire catalog and that's that. It is not -- there is
25 nothing that I am aware of with non-interactive satellite or

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1 streaming providers under 114. But adjustable rate blanket
2 licenses, as far as we know, are done by PR Rose. I am not
3 aware of any publisher that does that.

4 Market share data. To the extent that market share
5 data bears upon streaming or is germane to Pandora, I think
6 that ASCAP would be a better source of that information,
7 because we don't have the information relating to other
8 publishers. There is stuff that's published all the time in
9 Cashbox or Billboard, and I don't know how, you know,
10 significant or real that data is. But I would think that the
11 PR Rose, who distribute money whether it is from terrestrial
12 radio or otherwise, have that information, to the extent that
13 anybody does, certainly more than we do -- you know, our
14 information -- we don't know what other publishers have, but
15 our information is largely anecdotal.

16 THE COURT: So you don't track market share data?

17 MR. ZAKARIN: Well, you track market share data in the
18 sense that, you know, you know roughly what your revenues are,
19 what the public -- what your performances are based upon what
20 ASCAP or BMI or SESAC give you. But I think the market share,
21 there is, as far as I know, no hard empirical data that we have
22 that tells us in a specific genre do we have this share. And I
23 think to the extent it exists, you may get it from radio, you
24 may get it from Billboard, they may track the magazines whose
25 songs are being played more at a given point in time, but I

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1 don't know that it is anything more significant than that.

2 And I don't know how it would bear upon a specific
3 segment, which is 114 licenses and streaming, what our market
4 share is. But to the extent that it's significant, to the
5 extent that it bears upon this license, you know, I suppose
6 they can get that information from ASCAP or, if they want to,
7 from BMI and, I assume, SESAC, and all of them would probably
8 have different market share because all of them, their catalogs
9 change from time to time.

10 The last piece of it, I don't have a clue what the
11 Sony/EMI merger has to do with this rate proceeding. And there
12 is no Sony/EMI merger, by the way. Sony Corporation -- not
13 Sony/ATV, but Sony Corporation of America is an investor along
14 with some sovereign, you know, foreign sovereign funds who put
15 up money and purchased EMI from Citigroup, which had foreclosed
16 upon Terra Firma, which was the acquirer of both the record
17 company known as Capitol Records now and EMI Music Publishing,
18 and there was a broad auction market and it was a long sale
19 process, and Sony Corporation America, with a bunch of
20 investors, was the successful bidder for EMI. They filed, as
21 they are required to do in any significant acquisition or
22 takeover, they filed documents with the European Community.
23 They filed documents with the Justice Department and the FTC,
24 which conducts inquiries into whatever the competition issues
25 are. And all of that was provided, hundreds upon hundreds of

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1 thousands of documents, to all of the governmental entities.

2 The EC requires, condition of the acquisition, that there be a
3 divestiture of certain limited number of catalogs, which were
4 divested. The FTC and DOJ agreed with that limited
5 divestiture, and that was done.

6 It has nothing, as near as we can tell, to do with EMI
7 and Sony's individual direct licenses with Pandora. And I
8 think Mr. Steinthal knows that, but I think (a) perhaps it has
9 some in terrorem pleasure for him or he wants to burden us by
10 actually having to reassemble hundreds of thousands of
11 documents that were turned over to the FTC and the DOJ for
12 purposes of a, you know, an acquisition which has to be
13 scrutinized by the government.

14 Now, if it were really important, I suppose -- and I
15 haven't, you know, dug into this -- I suppose he could do a
16 FOIA request of the DOJ or the FTC targeting what he thinks or
17 hopes may be there that's relevant, but he hasn't done that.
18 And to force us to go through that mass of material produced by
19 both EMI and Sony separately -- Sony Corp., not Sony/ATV but
20 I'm sure related to Sony/ATV -- to try to figure out where, if
21 anything, it touches upon this, it's hard for me to see that it
22 does. Again, massively burdensome and not targeted at all.

23 So, yes, we objected to that.

24 THE COURT: So for --

25 MR. ZAKARIN: Those were nine categories, grossly

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1 stated.

2 THE COURT: Right. I think for five of them you say
3 if you want this, go to ASCAP. For one of them -- no, really,
4 two of them you have agreed, numbers 2 and 5, to make either
5 limited production or a full production.

6 Number 7, you have nothing to give.

7 MR. ZAKARIN: We don't do adjustable rate licenses.

8 And, by the way, it is worth noting that as part of
9 the meet and confer, we have agreed to do a very broad ESI
10 search, which we are in the process of doing. We've gone
11 through hard-copy documents. There are twelve, quote-unquote,
12 requests, with multiple subparts, to which we are producing
13 documents. They've agreed on at least eight that they should
14 go to ASCAP in the first instance, which is what we have said,
15 you know, on this sort of high-level identification
16 Mr. Steinthal has listed that they should put ASCAP on notice.
17 All eight requests were totally withdrawn as either duplicative
18 or really not relevant to begin with.

19 So the process had that purpose. What we thought was
20 left, as I said, of the -- you know, after the distillation of
21 lengthy discussions, was stuff that they accepted, you know,
22 our objections to and we were not moving forward on that. They
23 weren't technically withdrawing it but they accepted our
24 objections, and we were in agreement that they were not
25 pursuing it. But to the extent they are pursuing it, our

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1 objections remain and they remain for many of the reasons that
2 I've articulated.

3 THE COURT: Thank you very much.

4 Mr. Steinthal.

5 MR. STEINTHAL: Your Honor, I think, to put this in
6 context, it would help if I could take a couple of minutes as
7 to why this material is relevant and important and how
8 Mr. Zakarin is not accurately characterizing what the materials
9 are we're looking for that we're not getting.

10 THE COURT: I actually would appreciate that, but I
11 want you to start at a very high level, 40,000-foot level --

12 MR. STEINTHAL: I will.

13 THE COURT: -- which is where we are, and then before
14 we get down to the specifics.

15 MR. STEINTHAL: OK. So as we had a dialogue with you
16 briefly in January, this case has some fundamental issues that
17 are presented. The petition that Pandora filed framed the
18 issues, I think, pretty well, and Mr. Cohen, on behalf of
19 ASCAP, framed ASCAP's position pretty well in January. The
20 benchmarks that we, Pandora, have suggested to your Honor, as
21 set forth in the petition, we feel that we are entitled to the
22 rates established for new media online streaming, as set forth
23 in the Radio Music License Committee/ASCAP deal in 2012.

24 That rate structure is set forth in the petition. You
25 may recall that that deal was publicly announced with

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1 1.7 percent of revenue, with a deduction of 12 percent for
2 terrestrial broadcasting and a deduction of 25 percent for new
3 media transmission. That is a straight, standard deduction.
4 And the reason, we suspect, for the higher deduction for new
5 media transmission is that the cost of ad sales on the Internet
6 is a lot higher than the cost of ad sales in established media
7 like broadcast.

8 But that deal explicitly provides for coverage not
9 only of radio stations, terrestrial broadcasts, but also
10 simulcasts over the Internet and, very importantly, any other
11 Internet-only radio transmissions that radio broadcasters make.
12 So Clear Channel is a good example. They are one of the
13 largest if not the largest broadcaster they own. Part of their
14 business is called iHeartRadio, which is devoted to Internet
15 radio streaming, and they have a part of that service that is
16 very much like the Pandora service, which is Internet only and
17 has some consumer influence features.

18 I don't know if you have ever used Pandora. Pandora
19 is noninteractive radio but users can indicate what kind of
20 artists they like, what kind of genres they like, and they have
21 algorithms that create playlists -- again, it is not on demand
22 in any way, shape or form. It is just a little bit more what
23 some people call smart radio. You get to provide inputs, and
24 the algorithm that Pandora has developed ends up creating play
25 lists for their radio programming that hopefully users will

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1 find more attractive.

2 But in any event the RMLC deal absolutely covers
3 Internet transmissions so that if Pandora, for example, was
4 owned by Clear Channel, it would be subject to that RMLC deal,
5 no question about it, paying 1.7 percent minus 25 percent
6 standard deduction for the streaming. That's our model. 2012
7 covered the exact same kinds of features as we have, directly
8 comparable.

9 ASCAP's model is, as you heard in January, the
10 function of a new phenomenon that had started to occur as of
11 2011, which is a new kind of "direct license." And I put
12 direct license in quotes because it is unlike the direct
13 licensing that your Honor is familiar with from the DMX case.
14 It is not where a licensee has the choice of taking an ASCAP
15 blanket license or seeking to do a direct license and the
16 publisher has the choice of saying, naw, I would rather license
17 through ASCAP or maybe if I do a direct license with you I can
18 encourage you to play my music more than my competitor's music
19 and maybe there is something in there for me. That's not the
20 kind of direct license we have here.

21 What started to happen in 2011 was, through rule
22 changes that were required of ASCAP -- this is the compendium
23 and the rule changes that started to develop in 2011 --
24 selective withdrawals of catalog -- this is not a real
25 withdrawal of catalog at all, your Honor. When Sony and EMI

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1 have withdrawn their catalog, it's only with respect to certain
2 kinds of users and certain kinds of transmissions.

3 The catalog is still part of the ASCAP repertory. Any
4 television broadcaster, any traditional radio broadcaster, any
5 other licensee outside of this tiny little sliver of new media
6 licensees can get all of Sony's catalog and EMI's catalog
7 through an ASCAP license. It's still part of the repertory.
8 But for the single purpose, from what we can tell, of evading
9 this process, evading judicial scrutiny of their rates, the
10 publishers have said to ASCAP I want to excise your ability to
11 license new media rights. You can't license my new media
12 rights anymore. Everything else you can license.

13 And not only that, your Honor, from everything we can
14 tell, these, quote, direct licenses that have issued as a
15 consequence of this selective withdrawal are actually licenses
16 being administered by ASCAP. So it is as if nothing has
17 happened other than Pandora can't get ASCAP to license it for
18 its transmissions.

19 Now, why is all of this so relevant? Well --

20 THE COURT: So you have to negotiate with ASCAP for
21 everyone who hasn't withdrawn and then separately negotiate
22 with Sony, as an example, for --

23 MR. STEINTHAL: Yes.

24 THE COURT: -- those parties who have withdrawn?

25 MR. STEINTHAL: Right.

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1 THE COURT: Now, the benchmark from 2012 was a
2 negotiated benchmark; am I right?

3 MR. STEINTHAL: The RMLC deal that covered new media
4 transmissions, if you're owned by a radio broadcaster, yes,
5 negotiated deal. Your Honor approved it in January 2012.

6 THE COURT: So it was not after this Court's fact
7 finding or judicial determination?

8 MR. STEINTHAL: No. It was after I believe a fairly
9 prolonged pretrial proceeding.

10 THE COURT: Yes.

11 MR. STEINTHAL: Then a settlement. Correct.

12 THE COURT: So if ASCAP at that time was thinking
13 we're going to settle this dispute, we're unhappy with the
14 terms but we'll bite the bullet here, but we have a solution
15 going forward, this withdrawal rights for new media proposal,
16 then in some ways that might suggest the benchmark that you
17 love might be set too generously?

18 MR. STEINTHAL: I've never known ASCAP to do a deal
19 that it did not believe was reasonable for it to do rather than
20 litigate to try to get something that it believed to be
21 reasonable. They are not in the business of doing generous
22 deals for broadcasters. I find that hard to believe.

23 I think the jurisprudence, as well, is that if after
24 years of pretrial litigation the parties agree to a bilateral
25 agreement, that's typically the kind of benchmark that your

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1 Honor and other rate court judges have looked to in setting
2 fees. I don't see why this case presents any different
3 situation in terms of the validity of that as a potential
4 benchmark.

5 THE COURT: But as I understand it, from your point of
6 view, you're saying that essentially contemporaneously with
7 that settlement of the RMLC litigation, there was a withdrawal
8 of rights -- a massive withdrawal of rights of significant
9 ASCAP members, indeed, board members, that had affected a huge
10 percentage of the playlists that you want access to in your new
11 media environment.

12 MR. STEINTHAL: It happened gradually; first the EMI
13 catalog, then the Sony catalog has been withdrawn and, again,
14 only as to certain kinds of uses that affect Pandora. Those
15 withdrawals don't affect our primary competitors, for reasons
16 we don't really understand. I mean, Clear Channel's
17 iHeartRadio is a major competitor to Pandora. Yet because
18 iHeartRadio is owned by a broadcaster that is part of the RMLC,
19 they get to pay 1.7 percent minus 25 and they get the whole
20 catalog. They're not affected by the withdrawal. Why? Beats
21 me. We're trying to find that out, your Honor. That's party
22 of the reason we need discovery. Why has Pandora been singled
23 out?

24 Was this the result -- and going through a lot of
25 Mr. Zakarin's objections, we're asking for materials relating

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1 to, for example, these rule changes and the withdrawals that
2 dramatically affect us. Now, if EMI and Sony were on the
3 board, have notes of meetings either with other publishers,
4 maybe they were talking about, you know, the best idea here is
5 to pull our catalog, has there been any kind of that arguably
6 collusive behavior where publishers have said the solution is
7 to take our stuff out of ASCAP for this particular market? And
8 then we can, you know, try to -- you know, we won't be subject
9 to rate court scrutiny with respect to that. If he's got
10 documents on that, we're entitled to it.

11 THE COURT: So you're subject to rate court scrutiny
12 to the extent that you have to negotiate with ASCAP for new
13 media usage that it still controls the licensing rights for.
14 But, obviously, the Consent Decree and the rate court
15 proceedings don't apply to the negotiations you all have to
16 undertake with Sony.

17 MR. STEINTHAL: However, ASCAP is holding up as its
18 free market, competitive market benchmark those deals. So we
19 need to find out whether those deals, which are the embodiment
20 of this process, are free market deals or are they really sham
21 deals?

22 THE COURT: Those deals with whom? Sony's deals with
23 whom?

24 MR. STEINTHAL: With Pandora. The Sony/Pandora deal
25 emanates, your Honor, from this withdrawal process. It

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1 couldn't have happened without this whole process whereby rules
2 were changed at ASCAP that permitted selective withdrawals and
3 then these licenses issued.

4 THE COURT: So you have licenses with Pandora but you
5 don't want them to be used as a benchmark for your license with
6 ASCAP?

7 MR. STEINTHAL: You mean, we have licenses with Sony,
8 which is what they're --

9 THE COURT: I'm sorry.

10 MR. STEINTHAL: Yes. Right.

11 THE COURT: Pandora has licenses with Sony.

12 MR. STEINTHAL: Yes, and with EMI.

13 THE COURT: And EMI. And you do not want them to be
14 used as benchmarks for your license with ASCAP?

15 MR. STEINTHAL: That is correct.

16 And it is interesting -- and this goes to the Sony/EMI
17 transaction, I won't call it merger and I explained this in
18 January -- the first withdrawal and the first set of rule
19 changes at ASCAP happened in 2011, and EMI was the one that
20 withdrew. Then the Sony/EMI deal was subject to FTC scrutiny
21 and review.

22 Pandora negotiated with EMI while it was under review,
23 and a license agreement was entered into. ASCAP doesn't want
24 to use that one as a benchmark. Without getting into it, the
25 rate is different and they don't want to use it as a benchmark.

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1 They want to use the benchmark of the Sony/Pandora deal, which
2 deal emanated from the following set of circumstances:

3 (A) It was post-FTC scrutiny.

4 (B) And very importantly, we, Pandora, had negotiated
5 with ASCAP a deal. Sony had announced that it was withdrawing
6 effective January 1, 2013. Part of these rules state that if
7 you have a license in effect with ASCAP --

8 MR. COHEN: Your Honor, can I just interrupt?

9 You know, these were settlement discussions. Your
10 Honor is going to decide this. I find this highly
11 inappropriate. We had settlement discussions, and if we are
12 going to blow the settlement discussions, we ought to talk
13 about all the settlement discussions, including the rates that
14 were offered by Pandora. But I don't think any of this
15 appropriate before your Honor given that you are the fact
16 finder with respect ultimately to what's a reasonable rate.

17 THE COURT: I'm sorry. Is your objection that this
18 shouldn't be on the public record or that it's irrelevant to
19 the discovery dispute or it's ultimately undiscoverable and
20 irrelevant in this rate court proceeding?

21 MR. COHEN: Two-and-a-half of the three, your Honor.

22 THE COURT: OK.

23 MR. COHEN: I think, one, it is very difficult to have
24 a meaningful discussion of this publicly.

25 Two, I do think that it is ultimately irrelevant as

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1 introduction of evidence.

2 Whether it is discoverable is a different issue. But
3 there were discussions that did not result in an agreement
4 between Pandora and ASCAP below the rate ASCAP is seeking and
5 above the rate Pandora is asking, and I don't think we should
6 be talking about those in this context.

7 MR. STEINTHAL: I have no intention --

8 MR. COHEN: And I have no idea what it has to do with
9 the discovery that he is seeking from EMI.

10 THE COURT: OK. I think this is an argument, as I
11 understand it fundamentally, that the benchmark that ASCAP is
12 suggesting should be used here is not the correct one. So it
13 is an argument on the merits, but I think I probably invited it
14 so I could understand the context of the discovery disputes.

15 MR. STEINTHAL: I won't get into the details of those
16 negotiations, your Honor. It was just contextual that an
17 effort was made to secure a license from ASCAP at the end of
18 last year because ASCAP's own rules provide that if there is a
19 license in effect between ASCAP and a licensee, then these
20 withdrawals aren't effective against it.

21 So there was an effort made by Pandora to get a deal
22 done to avoid having to deal with another withdrawal like
23 Sony's. That deal never happened. I'm not going to get into
24 the specifics of it. But it left Pandora with only a couple of
25 weeks to deal with the fact that there was an impending Sony

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1 withdrawal. And as you'll find out in discovery, we couldn't
2 even get from ASCAP or Sony an identification of the works that
3 were being withdrawn. So we had, you know, when I say "gun to
4 the head," I mean it. I mean, we either had to take down
5 content we didn't know what it was, or we were at risk of
6 infringement. That's the context in which this Sony deal gets
7 done.

8 So our discovery requests are either in connection
9 with the RMLC deal, which we believe is the right benchmark --
10 and, your Honor, very importantly somehow or other the RMLC
11 deal got done after the EMI withdrawal in 2011, but, for
12 reasons we can't figure out, the RMLC is exempted from the
13 withdrawals. So they get for their Internet transmissions the
14 entire ASCAP repertory, not subject to any withdrawals, and
15 poor Pandora is stuck dealing with these withdrawals and in a
16 context in which the benchmark that ASCAP is proposing we
17 believe is not a competitive market benchmark; it is not a free
18 market benchmark.

19 And going to the discovery requests, when you go one
20 by one through these, the first two --

21 MR. COHEN: Your Honor, this is not the appropriate
22 time to deal with just the context and not the discovery,
23 because I do think there is a series of misstatements about
24 ASCAP's position. And I don't want to interrupt Mr. Steinthal,
25 but I do think with respect to the individual requests as

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1 between Mr. Steinthal and EMI, there are things said today to
2 set the context at 40,000 feet and going down which I
3 fundamentally disagree with; that if it is helpful to the
4 Court, I would like a chance to address it now or later.

5 THE COURT: I will give you a chance to be heard.
6 Mr. Cohen.

7 Mr. Steinthal.

8 MR. STEINTHAL: So, your Honor, the first two
9 requests, the request about ASCAP's negotiations with Pandora
10 and other publishers' negotiations or licensing of Pandora. If
11 EMI or Sony has materials that reflect discussions with ASCAP
12 or discussions with other publishers about the licensing of
13 Pandora, that's directly relevant to our case. We need to find
14 out whether there were discussions about whether ASCAP should
15 be licensing Pandora or whether individual publishers should
16 withdraw, or there -- you know, again, if publishers are
17 talking to each other about how Pandora should be licensed,
18 that's germane to whether or not this is a free market,
19 competitive market benchmark.

20 Now, Mr. Zakarin says, well, go to ASCAP. Well, we
21 did go to ASCAP and we're presumably getting ASCAP's own
22 records. And if EMI and Sony don't have anything, then so be
23 it. If they tell us, look, we don't have any records of
24 ASCAP's negotiations with Pandora or discussions about it, we
25 don't have any records of discussions with other publishers, if

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1 the answer is they don't have anything, they don't have
2 anything, but to say it is not relevant is -- I just don't
3 understand that. It's plainly relevant.

4 Item number 3, ASCAP's settlement with the RMLC.
5 Again, Sony and EMI have been sitting on ASCAP's board. They
6 then later withdrew catalog through these selective withdrawals
7 and had started to license Pandora differently than they
8 licensed the very same kind of new media transmissions made by
9 others. If they got documents reflecting why it was that the
10 RMLC was exempted from these withdrawals, we're entitled to
11 that --

12 THE COURT: Can you give me --

13 MR. STEINTHAL: If he has no documents, he has no
14 documents.

15 THE COURT: Can you just give me a second?

16 MR. STEINTHAL: Yes.

17 (Pause)

18 THE COURT: OK.

19 MR. STEINTHAL: 4, 5 and 6, your Honor, the compendium
20 changes and Sony's, EMI's or other publishers' withdrawals of
21 works and the administration of these so-called direct licenses
22 for works withdrawn, Mr. Zakarin says go to ASCAP. We have.
23 We'll get whatever ASCAP has. But, again, you have members --
24 or representatives of Sony and EMI sitting on ASCAP's board
25 that may have been very instrumental in the process by which

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1 these rule changes were enacted, why they were enacted, were
2 they enacted for legitimate purposes or arguably illegitimate
3 purposes. And if there were withdrawals, what were the
4 communications about the withdrawals? Were there statements
5 made as to why this was happening and why Pandora was being
6 separated out from other entities like radio broadcasters that
7 have new media transmissions?

8 Again, if they have documents residing at Sony and EMI
9 bearing upon this, we're entitled to it. For him to say, well,
10 go to ASCAP, fine, we did go to ASCAP. But if you've got a
11 separate category of materials because you're on the board and
12 you may have been talking to other publishers, we're entitled
13 to that.

14 Number 7 is the adjustable fee blanket licenses. This
15 goes, your Honor, to the whole notion of if we are stuck
16 dealing with this phenomenon, then obviously we don't want to
17 pay ASCAP for withdrawing catalog. And part of it -- and we
18 lay this out in the petition. Part of what led to our filing
19 last year was an inability to get an agreement with ASCAP about
20 how to take into consideration the withdrawals. That's where
21 the adjustable fee blanket license comes in. Were there
22 discussions about adjustable fee blanket licenses? A term of
23 art now, obviously, after the DMX case. We all know what they
24 are. They are forms of blanket licenses that take into
25 consideration, through a carve out or other mechanism, catalog

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1 that ASCAP is not licensing to the licensee.

2 If Sony or EMI has materials relating to the merits or
3 demerits of AFBLs or how they construe the appropriate use of
4 AFBLs, again, if they have nothing, they have nothing. But if
5 they have it, to say, well, we don't issue them generally, OK,
6 I wouldn't expect a publisher to issue an AFBL. I certainly
7 would anticipate that a publisher might have strong views about
8 how the deductions or carve outs would be calculated in a world
9 in which ASCAP is issuing AFBLs, and if there are those
10 documents, we should get them. They directly bear on the form
11 of the license that we're asking for from ASCAP.

12 The market share data bears on the same issue, your
13 Honor. Because one of the ways in which there might be an
14 adjustment to the ASCAP blanket license might be based on the
15 market share of the publisher who is withdrawing. It is as
16 simple as that. It is hard for me to believe that Sony and EMI
17 don't track how they're doing from a market share perspective.

18 Yes, I can go to Billboard and, you know, every now
19 and then there will be some sort of reflection of market share,
20 not broken down by medium. If Sony and EMI have data on what
21 they believe their market share to be with respect to radio or,
22 more specifically, Internet radio, again, either they have it
23 or they don't. If they don't have it, let them -- they can
24 tell us they don't have it. But to say that it's -- you know,
25 just go to ASCAP to get ASCAP's performance information, that's

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1 not sufficient from my view. I believe we are entitled, if
2 they're tracking market share themselves, to get their market
3 share information.

4 And lastly on the Sony/EMI transaction, I think it is
5 fair to say if it wasn't for this whole context, we wouldn't be
6 asking for materials relating to that. And I think it is fair
7 to say that we would be happy to narrow that to just the
8 material submitted to the FTC. In other words, if there is no
9 burden with that, if Sony and EMI made submissions to the FTC
10 seeking to get approval and justification and, you know,
11 providing their justification for the transaction, maybe they
12 made some statements about the market effect of this
13 transaction. I am sure they did. And if their conduct is
14 inconsistent with the statements they made, I think we're
15 entitled to that. So I'm happy to narrow this to just what was
16 submitted to the FTC or other U.S. agencies to justify the
17 transaction.

18 THE COURT: OK. Well, with respect to -- I am going
19 to give Mr. Cohen a chance to be heard right now. But just to
20 address number 9, I am not going to order the production of
21 everything submitted to a government agency. OK? Just because
22 it was once collected, it is not going to be discoverable.

23 So if you had a targeted, narrow request for a certain
24 kind of document or information that's related to the
25 acquisition or investment in EMI, you know, you should discuss

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1 it. But number 9, we are not going to have the production of
2 just everything submitted to a government agency that is doing
3 an antitrust review.

4 MR. STEINTHAL: And I think, your Honor, if I wasn't
5 clear, I am sure there is some memorandum. I don't want all of
6 the attachments. But if there is a memorandum -- a
7 justificatory memorandum submitted to the FTC, we are prepared
8 to limit it to whatever justificatory memoranda were submitted
9 by Sony or EMI in support of the merger or the transaction, or
10 however you want to describe it, so we could dispense with
11 anything else.

12 THE COURT: OK. Thank you.

13 So, Mr. Cohen, do you want a chance to be heard?

14 And, yes, I know, Mr. Zakarin, you want to be heard,
15 but I want to give Mr. Cohen a chance first.

16 MR. ZAKARIN: I will just ask to defer to Mr. Cohen
17 and then respond.

18 MR. COHEN: Your Honor, I am not really attempting to
19 burden the record with respect to this discovery dispute. It
20 is not our dispute. We have a point of view, which is that
21 Pandora asked for a very expedited proceeding, and we are
22 engaged in now unbelievably protracted third-party discovery on
23 a theory of collusion that was not advanced in January with
24 your Honor.

25 What we heard in January was that the RMLC benchmark

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1 should be the benchmark. They always said that. What I said
2 in January, and I think what Mr. Steinthal admitted today, is
3 ASCAP's position is not that it singled out Pandora. Pandora
4 is not the only entity that is subject to the withdrawal of
5 works. All similarly-situated entities are subject to that
6 withdrawal. But that the RMLC deal was done, if your Honor
7 will recall from January -- we had a lot of matters between now
8 and then -- that 98 or 99 percent of the revenue in the radio
9 deal, which was a backwards and forwards deal -- and backwards
10 to a time in which iHeartRadio did not exist -- 98 or
11 99 percent was attributable to terrestrial radio, a business
12 Pandora is not in.

13 So if we want to know what ASCAP's argument is --
14 there is no secret -- it is that that benchmark which was
15 developed as this unified rate for 99 percent terrestrial and 1
16 percent Internet radio, most of which is just simulcast of
17 terrestrial radio, which, of course, again, is nothing like
18 Pandora, which is not simulcasted in any way, that that was the
19 deal. And, you know, the cherry on the whipped cream on a
20 multi-layer cake was the rate that will be put in place for
21 Internet transmissions of these fundamentally terrestrial
22 deals. So there is no singling out of Pandora.

23 The collusion argument, that's now being raised for
24 the first time, will lead to a dramatic expansion of discovery.
25 I said in January, and I'll say it again, that, you know, there

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1 is no secret here. ASCAP's members withdrew because they
2 thought the rates that ASCAP could achieve with respect to new
3 media transmissions, particularly by comparison to how the
4 record companies were doing with respect to the sound
5 recordings, they thought that those rates were not achievable
6 consistent with their view of the market. There was no great
7 collusion here.

8 This matter -- and I want to state this now because it
9 is quite important -- this matter was brought by EMI and then
10 by ASCAP to the Justice Department to see if they had a problem
11 with the amendment of the compendium. So the notion that this
12 is some kind of big antitrust price fix is inconsistent
13 completely with reality.

14 The fact of the matter is that ASCAP members want to
15 withdraw with respect to certain licensing rights. There is
16 nothing in the decree that speaks to that. ASCAP is a
17 voluntary membership organization. Any one of the publishers
18 can withdraw their entire catalog for all purposes, and some
19 number of members -- at that point it was Sony -- said we want
20 to withdraw. And ASCAP sought guidance from the Justice
21 Department. EMI went to the Justice Department. We're not
22 dealing with an antitrust collusion here to fix prices.

23 Now, ultimately whether each specific deal your Honor
24 will view as an appropriate benchmark, that's what we will have
25 a trial about. But there will be additional deals, and that is

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1 what is part of what is going on here. There are the --
2 Universal and EMG have announced that they are withdrawing as
3 of July 1. Presumably, Pandora is having negotiations that we
4 will see what the product is because ASCAP has no visibility
5 into that. So we will see what the product of it is. And we
6 will be arguing that those are market benchmarks, as well. So
7 there may be a series of market benchmarks.

8 But our fundamental position is that rates negotiated
9 by individual publishers in the marketplace are a benchmark.
10 And we have arguments as to why the radio benchmark is not the
11 radio benchmark, but it is not just about one purported
12 benchmark supposedly with a gun to its head. But if we are
13 going to engage in this massive conspiracy discovery -- and
14 there are subpoenas outstanding from Pandora not just with
15 respect to Sony/EMI but Universal, Warner, EMG, and two small
16 publishers, we are talking about an expansion of discovery
17 that's far beyond what we contemplated when we had this
18 expedited schedule.

19 We will do our best, obviously, to deal with it, but
20 this case is expanding way beyond the way it was framed by
21 Pandora in January.

22 THE COURT: I think we have a fact discovery cutoff
23 date of July 2nd.

24 MR. COHEN: And I'll say, your Honor, that
25 Mr. Steinthal and I have discussed extending that without

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1 extending any of the other dates and, you know, whether your
2 Honor wants us to come back for approval. We understand that
3 the ultimate date for your Honor is the October 4th final
4 pretrial, and we may have to adjust some of those interim
5 dates. And he and I have discussed that.

6 And if your Honor wants us to propose an amendment to
7 the scheduling order, we will be happy to do that, but we
8 actually discussed this as recently as this morning.

9 THE COURT: As far as I'm concerned, on consent the
10 parties can adjust any interim dates. Just get me a stip and I
11 will so order it so we have a record to docket.

12 And you are right, I only care about the
13 October 4th date --

14 MR. COHEN: Right.

15 THE COURT: -- at this point.

16 MR. COHEN: I might have chosen my words badly, but we
17 thought that we would have some latitude as long as we met the
18 October 4th date.

19 Anyway, I yield to Mr. Zakarin.

20 MR. ZAKARIN: I will try to be brief, your Honor.

21 With what Mr. Steinthal went through, I thought was
22 most compelling, at least to me, was he used the word "if" a
23 lot -- if this exists, if that exists. Again, I'm starting at
24 a high level here. He's not suggesting he has the slightest
25 knowledge that there are any such documents in existence or

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1 that Sony or EMI colluded with anybody or did anything. And
2 he's speculating and saying you, third party, go look for all
3 of these things that may exist, and if they exist and if you
4 find them, you've got to produce them.

5 That's not the way discovery should be. There should
6 be some sort of a good faith basis, particularly with a
7 nonparty, for targeting documents that you know exist, not ones
8 that you're speculating may exist and you don't have a basis
9 for suggesting it.

10 And what I'm also focused on is a lot of what I think
11 Mr. Steinthal argument relates to -- you notice, I keep
12 switching, I can't see with my other glasses.

13 THE COURT: There is this little line here.

14 MR. ZAKARIN: You know what, I tried that. I tried
15 that stuff and I found myself falling off of curbs, and I found
16 that my wrists were better served by doing it this way, except
17 when I am in court.

18 It almost sounds as if what Mr. Steinthal objects to
19 is the existence of direct licensing or consensual licensing,
20 and that's not an argument that necessarily belongs in this
21 court. I think it belongs in another branch of the government.

22 He doesn't like that Sony, EMI, perhaps other
23 punishers who were dissatisfied, to begin with, with the
24 disparity between sound recordings being licensed for 13, 14
25 times what was being paid to the publishers and the writers.

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1 That was the motivating force, that they felt they could do
2 better negotiating directly. They have the right to do that
3 under the existing Consent Decree.

4 And as Mr. Cohen put it, we can withdraw rights in
5 toto or in part. And the rights that were withdrawn were not
6 the rights to license Pandora and not even just the rights to
7 license Section 114 noninteractive streaming entities. It was
8 a host of new media entities. It includes cloud computing. It
9 includes a host of non-Section 114 uses that are available for
10 those withdrawing publishers to license.

11 I get that Pandora doesn't want the Sony license
12 offered up as a metric. That's between Sony and ASCAP.

13 THE COURT: Pandora and ASCAP.

14 MR. ZAKARIN: Correct. I'm sorry.

15 Between Pandora and ASCAP. That's not our lookout.
16 They know what the license is. They know the conditions. They
17 know the administration agreement. All of that is available
18 and we are producing it. We have no objection to producing
19 that.

20 When we hear about the RMLC, they have everything they
21 need about that, it appears to me. We're not a party to the
22 RMLC. We were not a party to the settlement; we are not on it.

23 And, by the way, when Mr. Steinthal talks about
24 getting to some of the executives of some of the major
25 publishers on the board of ASCAP, one of the things they've

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1 requested -- and which we agreed to produce -- are notes taken
2 at ASCAP meetings by these board members that are either Sony
3 or EMI executives. We've agreed to produce that. So, you
4 know, that issue is already subsumed, and what Mr. Steinthal is
5 addressing is I'm not quite sure, actually.

6 THE COURT: How many custodians are you searching?

7 MR. ZAKARIN: The custodians that we are searching,
8 six or seven that were involved in dealing with, I think,
9 Pandora and other services as well and withdrawals. These were
10 not heavily staffed companies, by the way. They tend to be two
11 or three people from both companies who were involved who were
12 interfacing, and that's what we are looking at; those were the
13 executives.

14 And we've also agreed, by the way, your Honor, to go
15 back to, I believe, January 2010 -- that was also a compromise
16 that we agreed to -- because the first withdrawal, just so your
17 Honor knows, was by EMI, and I believe it was in or about May
18 of 2011. So we're going back almost a year and a half earlier
19 than that date in terms of searches of materials.

20 THE COURT: So do the six custodians include those
21 executives who sat on the ASCAP board?

22 MR. ZAKARIN: I believe they do. I believe they did.
23 Although they were not necessarily the ones who were involved
24 in the negotiations themselves with either Pandora or the
25 withdrawal with ASCAP.

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1 THE COURT: I understand that.

2 MR. ZAKARIN: Yes.

3 THE COURT: But those are other custodians that are
4 included in the six?

5 MR. ZAKARIN: Yes.

6 THE COURT: And the nine items here and I know that
7 each one needs to be separately analyzed, but are you resisting
8 for these six custodians running search terms that arise out of
9 these nine categories?

10 MR. ZAKARIN: Let me address the search terms because
11 it is useful.

12 We proposed search terms. We went through a lengthy
13 process to try to figure out the broadest search terms that we
14 thought would pick up everything that relates to everything
15 that we've agreed to produce, which, by the way, in many ways
16 sort of overlays a lot of these requests because they are not
17 so narrowly drafted, and even the ones we've agreed to produce,
18 while we've narrowed them, they necessarily are going to bleed
19 into some of these areas.

20 We came up with a broad set of search terms that we
21 thought would cover and pick up and hit everything. We sent
22 them to Mr. Steinthal. They actually did not object to any of
23 the search terms. They didn't suggest any alternative search
24 terms. So it is our assumption at this point that they have
25 approved the search terms, and we are going to be running those

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1 searches. Then we are going to take the data, put it up in the
2 cloud, and then we're going to review it all to see whether it
3 is attorney-client privilege, whether it's responsive or not.

4 That process is about to commence, but we have not
5 heard boo that the search terms are inadequate to provide what
6 they need.

7 THE COURT: So --

8 MR. ZAKARIN: I can't tell you that they will (a) turn
9 up, you know, things in these objected-to categories; they may,
10 they may not. But I can say that if they turned up something
11 in these objected-to categories that don't overlay the
12 categories in which we've agreed to produce, it would not be
13 our intent to produce it because of our objections.

14 THE COURT: OK. That's very helpful.

15 So since you haven't yet run this search and if I
16 required you to produce these nine categories of information,
17 to the extent that the searches you run produce material
18 encompassed by these nine categories, that would certainly sort
19 of eliminate a lot of the dispute here.

20 MR. ZAKARIN: If the searches -- well, the nine
21 categories include the Justice Department. If we put that to
22 the side. If those searches produced hits that arguably are in
23 some of these categories and if your Honor directed us, you
24 know, as a result -- if it turns up hits in those categories,
25 you should produce it, I'm not about to disregard your Honor's

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1 order in that regard.

2 THE COURT: I appreciate that, and that was a poorly
3 phrased question on my part.

4 Again, we'll put aside the Department of Justice or
5 FTC or EC submissions, No. 9, Item No. 9, so, Mr. Steinthal,
6 why isn't an ESI search that is about to be conducted
7 sufficient for your purposes?

8 MR. STEINTHAL: Your Honor, I think it probable is
9 sufficient as long as they don't exclude from the production
10 the matters they've objected to.

11 THE COURT: So you have no trouble with the search
12 terms they sent over?

13 MR. STEINTHAL: We reviewed them briefly. I think
14 that we would like to have an opportunity to -- you know, we
15 knew we were coming here. I didn't realize that issue was
16 going to come up. But I'm happy to deal with that today and
17 deal with Mr. Zakarin about that and let you know if there is
18 any kind of dispute about the scope of the ESI search.

19 THE COURT: OK. Mr. Zakarin, when did you provide the
20 search terms to Pandora?

21 MR. ZAKARIN: I think it was around May 14, if I am
22 not mistaken, your Honor.

23 MR. STEINTHAL: It was last week.

24 MR. ZAKARIN: May 14, yes.

25 THE COURT: OK. We are not talking February?

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1 MR. STEINTHAL: No.

2 THE COURT: No. OK.

3 So, fine, if you can let Mr. Zakarin know by the end
4 of today whether or not you wish to modify or add to,
5 supplement in a minor way -- minor way -- the search terms,
6 fine.

7 And so putting aside item 9, let me just quickly
8 review.

9 So for items 1 through 8, I will require Sony/EMI to
10 produce responsive material to the extent that its anticipated
11 search of the six custodians generates any such material.

12 Now, let's turn to item 9. So it has been narrowed to
13 the memorandum justifying the investment/acquisition. Let me
14 just think about this for one second. I'll give everybody a
15 chance to be heard.

16 (Pause)

17 OK. So, Mr. Steintahl, I appreciate that you've
18 dramatically narrowed this. As I understand it, such a
19 memorandum would be addressed to the government's concerns
20 about antitrust violations. Am I right?

21 MR. STEINTHAL: Either antitrust violations or about
22 whether the transaction should be approved in the context of
23 any other regulatory concerns the government might have about
24 the effect on the market. I'm not sure -- I mean, the first
25 thing that you would think about is an antitrust issue by

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1 virtue of the consolidation of two large publishing catalogs.
2 So, yes, but there might be other issues addressed from a
3 regulatory standpoint.

4 And our concern is if there are statements about the
5 effect on the market, which is really what I suspect part of
6 that submission would be because we just -- I think it's fair
7 game to look at whether the conduct post-transaction mirrors
8 what was said about what the conduct would be or what the
9 effect on the market would be.

10 THE COURT: Well, wait one minute.

11 I don't think a company binds its hands in any way if
12 its projections about market effect don't turn out to be
13 accurate. The issue is you have a lawful duty to be honest
14 when you make your presentation to the government. The
15 government has an opportunity to ask questions and do its own
16 inquiry and expects, I think, cooperation from the principals
17 involved, and then the government makes an informed decision
18 based on that record. And then companies go forward into the
19 world in their new state, if it is approved, and the market is
20 as one projected, or not, ultimately.

21 MR. STEINTHAL: Yes. Your Honor, I don't know exactly
22 what was said, going to the point that Mr. Zakarin raised
23 about -- he kept on saying if this happened, if that happened,
24 that's all I'm saying. That's not really true. We know, as a
25 matter of fact, that Sony and EMI were part of the board that

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1 created new rules that permitted this new kind of withdrawal.
2 We know, as a matter of fact, Sony and EMI have withdrawn
3 catalog. Our requests really go specifically to why. What
4 were the reasons and the effects associated with that, and do
5 those -- does the conduct involve relating to it render the
6 held up benchmark of the Sony/Pandora deal a legitimate or not
7 legitimate benchmark.

8 So we are not just fishing around. We have specific
9 facts. We know these things have occurred. We know there has
10 been a submission to the Justice Department or the FTC. And we
11 have tried to be more targeted in what we are seeking.

12 THE COURT: So I'd like, Mr. Zakarin, you and
13 Mr. Steinthal to talk about an extremely targeted request that
14 would require Sony -- I think it would have been Sony's
15 submission, but Sony/EMI's submission to the FTC. To the
16 extent that that memorandum has a discussion about withdrawal
17 rights or the compendium -- and I wouldn't be surprised if it
18 does not -- that you would make a limited disclosure of that
19 passage but not the entire document. I'm probably describing
20 it inartfully, so that's why I would like the two of you to
21 talk. I'm not ordering that the entire document be turned
22 over.

23 MR. ZAKARIN: Your Honor, I understood what the focus
24 was. And what I don't know, and I speak candidly, I don't know
25 how readily searchable or identifiable material is to target

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1 that specific item. In other words --

2 THE COURT: I'm looking at one document --

3 MR. ZAKARIN: I understand that. What I'm
4 suggesting --

5 THE COURT: -- called a memorandum, which would have
6 been not the attachments, not responsive submissions after
7 further inquiry, the memorandum in which you made your first
8 request for approval.

9 MR. ZAKARIN: Then I understand. Then if that targets
10 it and if there is something in there that addresses the
11 withdrawal from ASCAP and/or direct licensing of new media, I
12 could see how that would bear on it, and that is an easier
13 target in that sense, yes. I am willing to look for that, your
14 Honor.

15 THE COURT: OK. Counsel, is there anything else we
16 need to address today? Mr. Steinthal?

17 MR. STEINTHAL: Nothing else, your Honor, from our
18 end.

19 (Continued on next page)
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1 THE COURT: OK. And Mr. Zakarin?

2 MR. ZAKARIN: Nothing else, your Honor.

3 THE COURT: OK. Mr. Cohen?

4 MR. COHEN: No, your Honor.

5 THE COURT: Thank you, Mr. Cohen, for your presence
6 here even though -- I know you have an interest, I'm not
7 surprised you are here, but thank you.

8 Thank you, all.

9 THE LAW CLERK: All rise.

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